

## **Manual of European Environmental Policy**

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# Historic legislation: Nitrogen dioxide

<b>Formal reference</b> <a href="#">85/203/EEC</a> (OJ L87 27.3.85)	Directive on air quality standards for nitrogen dioxide.
Proposed 7.9.83 – COM(83)498 (OJ C/1983/258/3)	
<b>Legal base</b>	Articles 115 TFEU (originally Article 100 EEC Treaty) and 352,353 TFEU (originally Article 235 EEC Treaty)
<b>Binding dates</b> Notification date Formal compliance Limits to be met Report to Commission	3 March 1985 1 January 1987 1 July 1987 Annually from December 1988

Directive 85/203/EEC was repealed between 19 July 2001 and 1 January 2010 by the Air Quality Framework Directive [96/62/EC](#) and its daughter Directive [1999/30/EC](#).

## Purpose of the Directive

An air quality standard was set for nitrogen dioxide (NO<sub>2</sub>) in air in order to protect human health and to contribute towards protection of the environment. It only related to the ambient atmosphere and did not cover indoor or workplace conditions.

Nitrogen dioxide is mainly a primary and a secondary pollutant. Some is directly emitted from combustion processes (industrial and vehicle emissions). Some is formed in the atmosphere as a result of the chemical interaction of nitric oxide (NO) emitted from combustion processes with ozone and other oxidants.

## Summary of the Directive

The Directive set a limit value of 200 µg/m<sup>3</sup> for nitrogen dioxide in the atmosphere (calculated as the 98th percentile of mean values per hour recorded throughout the year) to be observed from 1 July 1987. It also set guide values of 50 µg/m<sup>3</sup> (50th percentile of mean values) and 135 µg/m<sup>3</sup> (98th percentile of mean values) which were intended to serve as reference points for the establishment of particular schemes within zones in Member States with the object of improving protection of the environment in the long term.

Provision was made for Member States, if unable to meet the limit value by the due date in certain zones, to report the circumstances to the Commission with plans for gradual improvement of the air as soon as possible. In any case the limits were to have been met by 1 January 1994 at the latest. In the interim period less stringent limits could be set by the Member State. Member States could also fix more stringent limits than the guide values in

zones which were considered to need special environmental protection. Member States could at any time fix more stringent values. Annexes established how the limit values were to be measured and monitored.

Measuring stations were required to be set up, particularly in the zones where the limit values were relaxed or made more stringent. Member States were to notify the Commission in annual reports of instances where the limit value had been exceeded. The Commission was also to be notified of the reasons and the measures taken to deal with such incidents. These details had to be submitted within one year of the end of the reference period. The Commission could also request additional information on the zones where lower or more stringent limits were set. The Commission would report periodically.

In regions near the border with other Member States where it was intended to fix lower or higher limit values prior consultations were to take place, the Commission was to be informed and could take part. Where significant pollution originating from another Member State led to limit values being exceeded in another, consultation was also to take place with a view to remedying the situation.

A Committee for adaptation to scientific and technical progress was established to allow amendments to the reference methods of analysis laid down. It had no power over the limit values.

In September 1996 the Air Quality Framework Directive [96/62/EC](#) was adopted. This provided for the establishment of new EC air quality standards by daughter Directives, including for nitrogen dioxide. In April 1999 the first daughter Directive was adopted. Directive 1999/30/EC introduced new limit values for, *inter alia*, nitrogen dioxide. As a result, Directive 85/203/EEC was repealed. Some of the Directive was repealed on 19 July 2001, with Articles 1(1), first indent and (2), 2, first indent 3(1), 5, 9, 15 and 16 and Annex I of the Directive being repealed on 1 January 2010.

## **Development of the Directive**

The first environmental action programme of 1973 provided for investigation of nitrogen oxides as one of the air pollutants in the first category in order to determine 'criteria' and harmonize measuring methods. The second programme endorsed this priority and the need to formulate quality objectives. A Council Resolution of 7 February 1983 (OJ C146 17.2.83) reinforced the move towards establishing quality standards for nitrogen oxides. The effects of air pollution on forests in Germany (and the 'acid rain' problem in general) in which nitrogen oxides play an important part gave added impetus to producing the proposal. In contrast, in the United Kingdom, for example, the view taken by the government was an unfavourable one. The 200 µg/m<sup>3</sup> level was considered too stringent and to be questionable both on medical grounds and those of practical implementation (later World Health Organization guidelines on NO<sub>2</sub> were however, considerably more stringent). In particular, the monitoring costs were considered to be too high.

During the course of negotiation, the proposed limit values remained unaltered. The most significant change, however, was to relax the monitoring requirements contained in Annex III. Greater emphasis was placed on assessing the risk of exposure to individuals, and monitoring sites were accordingly to be chosen where this risk was highest. For zones affected by pollution from motor vehicles, monitoring stations should include ‘canyon streets carrying heavy traffic and major intersections’ and be situated where NO<sub>2</sub> concentrations were likely to be greatest. Monitoring was also to take place in more extensive zones suffering from NO<sub>2</sub> discharges from fixed sources – that is industrial areas. A Commission proposal that in ‘critical zones’ affected, for example, by photochemical smog, monitoring stations should be established to a density of three per 100 km<sup>2</sup> was dropped. Instead, the number of monitoring stations in industrial areas was simply to reflect the extent of the polluted zone, and the uneven spatial distribution of the pollution.

Member States were therefore allowed considerable flexibility over the number and positioning of monitoring stations, which allowed some Member States to accept the Directive despite reservations on the limit values it contained.

The development of the Directive provided an example of where the Council reached agreement on the proposal but had to wait for the European Parliament’s opinion before formally adopting it. The Parliament’s opinion was published some six months after the Council had reached agreement. Although the Commission then proposed certain amendments put forward by the Parliament these were not adopted.

## Implementation of the Directive

Information on national transposition of Directive 85/203/EEC can be found in the [national executive measures](#).

In November 2002 the European Commission published a report on the state of implementation of the Directive ([COM\(2002\)609](#)). Few exceedances of limit values were reported for the period 1997–1999, with no exceedance in the United Kingdom.

## Enforcement and court cases

There were two cases that were concluded in the European Court of Justice concerning Directive 85/203/EEC:

- [C-14/90](#) 01/10/1991. This case was brought by the Commission against France for failure to adopt within the prescribed period the provisions necessary to comply with Directive 85/203/EEC.
- [C-186/99](#) 10/03/1993. This case was brought by the Commission against Belgium, for failure to transpose adequately Directive 85/203/EEC. Under Article 4 Member States may fix lower values than those laid down by the Directive, Article 11 states certain obligations to consult and give information when they intend to use that

possibility in a region near the border with one or more other Member States. Belgium failed to transpose this prior consultation disposition. The Court found that it was a breach of Belgium's obligations under the Directive.

## **Related legislation**

The overall objectives of Directive 85/203/EEC have now been incorporated into the Air Quality Framework Directive [2008/50/EC](#) and the reader is directed to this section to explore related legislation.